

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC 20436

**MEMORANDUM ON PROPOSED TARIFF LEGISLATION
of the 109th Congress¹**

[Date approved: July 26, 2005]²

Bill No. and sponsor: H.R. 1336 (Rep. Cunningham).

Proponent name, location: Cymer, Inc.
17075 Thornmint Court
San Diego, CA

Other bills on product (109th Congress only): None.

Nature of bill: Permanent HTS amendment.

Retroactive effect: None.

Suggested article description(s) for enactment (including appropriate HTS subheading(s)):

Customs classifies the subject goods under heading 9013, the existing 4-digit international tariff category specifically naming “lasers, other than laser diodes”, in the distinct 6-digit subheading at the first level of indentation (subheading 9013.20.00). Contrary to this treatment, the proposed bill would create subheading 9010.49.10 under heading 9010, which covers various “apparatus...not specified or included elsewhere in this chapter.” Under the general rules of interpretation to the tariff schedule, Customs would likely continue to find that the 4-digit heading language for “lasers” is more specific, as an *eo nomine* tariff category, than one for miscellaneous apparatus and would continue to classify the subject goods under subheading 9013.20.00.³ Customs has issued a ruling, discussed below, classifying the subject goods in heading 9013. Thus, we note that the international Harmonized System appears to mandate that these goods now fall in heading 9013, so that the proposed subheading 9010.49.10 should be an empty tariff category.

Check one: n/a Same as that in bill as introduced
 n/a Different from that in bill as introduced (explain differences in Technical comments section)

Product information, including uses/applications and source(s) of imports:

The subject products are laser light sources used with photolithography systems designed for semiconductor wafer manufacturing. According to the proponent, the laser light source is combined with a wafer scanner (or similar apparatus) and a beam matching unit to form a single photolithography machine. The laser light source and wafer scanner work together using software and computer controls to

¹ Industry analyst preparing report: Falan Yinug (202-205-2160); Tariff Affairs contact: Jan Summers (202-205-2605).

² A copy of this memorandum is available at www.usitc.gov/tata/hts/other/rel_doc/bill_reports/index.htm.

³ We note that goods falling in the existing provision the bill would modify, subheading 9010.49.00, are scheduled to be transferred to new Harmonized System heading 8486 as of January 1, 2007, insofar as HS convention contracting parties reflect recently agreed international nomenclature changes in their national tariffs.

produce precise light pulses that match the movement of semiconductor wafers. The light produced is exposed on certain areas of the wafers using a photo mask to create circuits on the semiconductor chips.

Cymer is the only known U.S. producer of laser light sources used as part of a photolithography system for the production of semiconductors. It exports these products to various countries, including Korea; the proponent indicates that Korea had not originally classified the goods under subheading 9013.20 but began to do so after the New York Customs ruling was issued, with the result that a duty rate of 8 percent ad valorem was imposed. The proponent has indicated that the proposed new subheading is intended to result in a reciprocal reclassification of the product by Korea.

Gigaphoton, Inc. based in Japan is currently the only known non-U.S. producer of the subject type of laser light source.

Estimated effect on customs revenue:

The subject products are already imported at a general duty rate of 3.1 percent ad valorem under subheading 9013.20.00. Assuming that this bill is enacted but U.S. Customs and Border Protection (U.S. Customs) continues to classify the subject goods under subheading 9013.20.00, where they are currently classified, enactment of the bill would have no effect on Customs revenue. However, if the finished products of interest to this proponent (which are available from Japan) were reclassified under new subheading 9010.49.10, they would enter free of duty. If only products of Japan recently imported under subheading 9013.20.00 are considered, the revenue loss would be as shown in the table below. (The figure would be far higher if all dutiable imports under subheading 9013.20.00 were accorded duty-free entry; in 2004, such imports were \$143,841,000, a 29.4-percent increase over the 2003 dutiable import total of \$111,123,000.) It is likely that actual imports only of the particular laser device of interest to the proponent would be well below the quoted figures for imports from Japan only or from all countries, and thus the revenue loss would be lower as well. Separate data are not available.

HTS subheading: 9013.20.20 (laser apparatus)					
	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
Col. 1-General rate of duty (AVE) 1/	3.1%	3.1%	3.1%	3.1%	3.1%
Estimated value <i>dutiable</i> imports	\$11,000,000	\$11,200,000	\$11,400,000	\$11,600,000	\$11,800,000
Customs revenue loss	\$341,000	\$347,200	\$353,400	\$359,600	\$365,800

1/ The AVE is the ad valorem equivalent of a specific or compound duty rate expressed as a percent, using the most recent import data available.

Source of estimated dutiable import data: official U.S. government statistics for products of Japan, with 2004 data rounded and accorded small growth factor.

If Customs were to reclassify these complete products under the new subheading, the bill would have an additional effect on customs revenue because it is assumed that currently dutiable imports of parts of these products would also be reclassified. The two headings in question, 9010 and 9013, each cover particular finished goods and parts thereof. Accordingly, the table set forth below covers only the dutiable

parts and is presented on the assumption that Customs could decide to reclassify all or a portion of current imports.

The proponent has indicated it is the only know importer of the subject products. The proponent indicates that it currently pays duties on its shipments of parts of the subject products under subheading 9013.90.90 (4.5 percent ad valorem general rate of duty). Assuming these parts would be reclassified along with the finished products to heading 9010, proponent would pay no duties if the parts entered under subheading 9010.90.70 because it has a general duty rate of free. In its attached submission, the proponent discusses the parts it refurbishes in the United States and states that it may have overpaid U.S. customs duties, because it has not used the most beneficial customs procedures and duty provisions available. The proponent says it plans to implement more efficient customs procedures as soon as possible to make use of existing special entry provisions under chapter 98 of the HTS. Once those procedures are implemented, it believes that its customs duties paid on parts entered under HTS subheading 9013.90.90 should not exceed \$300,000 per year for the foreseeable future.

HTS subheading: 9013.90.90 (parts of subject apparatus)					
	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
Col. 1-General rate of duty (AVE) 1/	4.5%	4.5%	4.5%	4.5%	4.5%
Estimated value <i>dutiable</i> imports	\$5,000,000	\$5,000,000	\$5,000,000	\$8,000,000	\$7,000,000
Customs revenue loss	\$225,000	\$225,000	\$225,000	\$360,000	\$315,000

1/ The AVE is the ad valorem equivalent of a specific or compound duty rate expressed as a percent, using the most recent import data available.

Source of estimated dutiable import data: Commission and industry estimates.

Contacts with domestic firms/organizations⁴ (including the proponent):

Name of firm/organization	Date contacted	US production of same or competitive product claimed?	Submission attached?	Opposition noted?
		(Yes/No)		
Cymer, Inc. [proponent] Albert Cefalo, 858-385-6222; Edward Juliano, 978-264-0621	5/26/2005 6/7/2005 6/15/2005 6/16/2005	Yes	Yes	No
SEMI Victoria Hadfield, 202-289-0440	6/8/2005	No	Yes	No
Intel Corporation David Rose, 202-626-4390	6/13/2005	No	Yes	No
ASML US, Inc. Craig DeYoung, 480-383-4005	6/10/2005 6/13/2005	No	Yes	No
Agilent Technologies Robbins Pancake, ph: 202-416-6211	6/16/2005	No	No	No

Technical comments:⁵

In a ruling cited as NY G86069, dated January 22, 2001, Customs classified Cymer, Inc.'s ELS-6010 excimer laser used as a light source for photolithography systems as a laser under HTS heading 9013, specifically subheading 9013.20.00. According to U.S. Customs, because the excimer laser is a part of a photolithography system, classification is governed by note 2(a) to chapter 90. This legal note directs classification of the excimer laser to heading 9013, as this heading specifically covers lasers.

According to U.S. Customs, counsel for Cymer, Inc. had requested that Customs Headquarters review the NY ruling. Cymer later withdrew its request for reconsideration. Therefore, the NY ruling remains the official Customs legal interpretation as to the classification of excimer laser light sources. In view of the ruling, it is possible that if the bill were adopted, proposed subheading 9010.49.10 would be an empty provision with no product classified there.

The Commission defers to Customs and Border Protection as to whether the proposed bill would change the U.S. classification of Cymer's laser light sources. We do not have technical comments about the bill's

⁴ Other companies contacted that have not responded with views on the proposed legislation include: Coherent, Inc., Triquint Semiconductor, JDS Uniphase Corporation, Lambda Physik USA, Inc., and Applied Materials.

⁵ The Commission may express an opinion on the HTS classification of a product to facilitate consideration of the bill. However, by law, only the U.S. Customs Service is authorized to issue a binding ruling on this matter. The Commission believes that the U.S. Customs Service should be consulted prior to enactment of the bill.

proposed tariff provisions. If instead of the current bill there is an interest in creating a permanent duty-free category for proponent's goods under HS subheading 9013.20, we would be happy to assist in drafting such a provision and in developing an article description therefor. We have not consulted industry representatives about this possibility.

109TH CONGRESS
1ST SESSION

H. R. 1336

To amend the Harmonized Tariff Schedule of the United States to clarify the classification of laser light sources for semiconductor manufacturing.

IN THE HOUSE OF REPRESENTATIVES

MARCH 16, 2005

Mr. CUNNINGHAM introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Harmonized Tariff Schedule of the United States to clarify the classification of laser light sources for semiconductor manufacturing.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. TARIFF CLASSIFICATION OF CERTAIN LASER**
4 **LIGHT SOURCES.**

5 (a) IN GENERAL.—Chapter 90 of the Harmonized
6 Tariff Schedule of the United States is amended by strik-
7 ing subheading 9010.49.00 and inserting the following
8 new subheadings and superior text thereto, with such su-
9 perior text having the same degree of indentation as the
10 article description for subheading 9010.42.00:

“		Other:				
	9010.49.10	Laser light sources	Free		35%	
	9010.49.20	Other	Free		35%	”.

1 (b) **EFFECTIVE DATE.**—The amendment made ap-
 2 plies to goods entered, or withdrawn from warehouse for
 3 consumption, on or after the 15th day after the date of
 4 the enactment of this Act.

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